IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 8TH JANUARY 2007 / 18TH PAUSHA 1928

WP(C).No. 29788 of 2006(U)

CRRP.98/2005 of DISTRICT COURT, PALAKKAD

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PETITIONER:

B. MUHAMMED ALI,
MAVELI CEMENTS PVT. LTD. (FORMERLY SHALIMAR CEMENTS), 5/138, PARY'S GARDEN,KADAKKANKUNNU, PALGHAT.

BY ADV. SRI.P.N.PURUSHOTHAMA KAIMAL
SRI.ANILKUMAR.K.N.PILLAI
SRI.MATHEW KORAH
SRI.KASHA K.MALAYAN

RESPONDENTS:

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1. STATE OF KERALA,
REP. BY CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM.

2. DIVISIONAL FOREST OFFICER, PALAKKAD.

3. FOREST RANGE OFFICER, VALAYAR.

4. THE UNION BANK OF INDIA,
CHANDRANAGAR BRANCH, PALAKKAD.

BY SPL.GOVERNMENT PLEADER SMT.SUSEELA R.BHAT

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R.BASANT, J

W.P.C.No.29788 of 2006

Dated this the 8th day of January 2007

JUDGMENT

Against the petitioner, a crime is registered by the forest officials and investigation is pending. The crux of the allegations against him is that he had trespassed into the vested forest and had put up structures to start a factory. Plant and machinery were installed in the structures put up. The petitioner had approached the learned Magistrate with a petition under Section 451 Cr.P.C. The learned Magistrate rejected the said prayer. The petitioner approached the learned Sessions Judge and the learned Sessions Judge, by order dated 31/08/2005, directed release of the articles subject to conditions.

2. Subsequently, condition No.4 imposed therein that the petitioner shall not carry out any manufacturing process, was also deleted by this court under order dated 14/11/2005 (a copy of which is produced as Ext.P15). A copy of the order of the learned Sessions Judge is produced as Ext.P14. The petitioner, at that stage, had filed an O.A for a declaration that the property purchased by him in which he had put up the building and

machinery is not in the vested forest. The petitioner's petition was dismissed. An M.F.A is pending before this court, it is submitted. In the mean time, Annexure P17 order has been passed by the second respondent directing confiscation under Section 66 of the Kerala Forest Act. The petitioner has, in these circumstances, come to this court with a prayer that the machinery may be directed to be released to the petitioner subject to appropriate conditions.

3. The learned Special Government Pleader (Forest) does not raise objections against the prayer for release but only prays that appropriate conditions may be imposed to ensure that the petitioner would pay the value of the plant and materials to the State subject to the final orders to be passed in the prosecution which is proposed to be initiated against him.

4. I am satisfied that the request can be allowed. The plant and machinery shall be released to the petitioner on condition that the petitioner executes a bond for such amount as may be fixed by the learned Magistrate. The petitioner shall undertake to make such amount available to the court or to the respondents as may be directed on the culmination of the

criminal proceedings against him. The bond shall be executed subject to the satisfaction of the learned Magistrate. The petitioner shall execute the bond with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate. Needless to say, the learned Magistrate must fix the amount, as expeditiously as possible, at any rate, within a period of thirty days from the date on which a copy of this order is placed before the learned Magistrate.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006